Leroy Tate d/b/a The Green Machine Lawn & Landscaping *and* Charles Boyd

Leroy Tate d/b/a The Green Machine Lawn & Landscaping *and* Marcell Jones

Leroy Tate d/b/a The Green Machine Lawn & Landscaping *and* Charlando Hargrove. Cases 14–CA–157587, 14–CA–157596, and 14–CA–163528

August 30, 2016

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA AND MCFERRAN

The General Counsel seeks a default judgment in this case pursuant to the terms of an informal settlement agreement. Upon charges filed by individuals Charles Boyd, Marcell Jones, and Charlando Hargrove (the Charging Parties) on dates between August 10, and November 6, 2015, and an amended charge filed by Hargrove on December 28, 2015, the General Counsel issued an order further consolidating cases, second consolidated complaint and notice of hearing (the original complaint) on December 28, 2015, alleging that the Respondent violated Section 8(a)(1) of the Act. The Respondent filed an answer on January 11, 2016, admitting in part and denying in part the allegations of the original complaint.

Subsequently, the Respondent and the Charging Parties entered into an informal settlement agreement, which was approved by the Regional Director for Region 14 on February 29, 2016. Among other things, the Respondent agreed to make whole Boyd, Jones, Hargrove, and Damon Chandler by paying backpay in the total amount of $9584, to be paid in specified installments to the Region beginning on May 15, 2016.

The settlement agreement also contained the following provision:

> The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will reissue the complaint previously issued on December 28, 2015 in the instant case(s). Thereafter, the General Counsel may file a motion for default judgment with the Board on the allegations of the complaint. The Charged Party understands and agrees that the allegations of the aforementioned complaint will be deemed admitted and its Answer to such complaint will be considered withdrawn. The only issue that may be raised before the Board is whether the Charged Party defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board order ex parte, after service or attempted service upon Charged Party/Respondent at the last address provided to the General Counsel.

By letter dated May 18, 2016, the Regional Director for Region 14 notified the Respondent that it was in noncompliance with the terms of the settlement agreement by not making its first installment payment on May 15, 2016. The letter advised the Respondent of its obligation to pay the amounts owed within 14 days of the Respondent's receipt of the letter, and warned that failure to do so would result in the reissuance of the December 28, 2015 original complaint and the filing of a motion for default judgment.[1]

Accordingly, pursuant to the terms of the noncompliance provisions of the settlement agreement, on June 8, 2016, the Regional Director issued a consolidated complaint based on breach of affirmative provisions of settlement agreement (the reissued complaint). On July 11, 2016, the General Counsel filed a Motion for Default Judgment with the Board. On July 13, 2016, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not

[1] On May 25, 2016, in a telephone conversation with the compliance officer for Region 14, the Respondent's owner, Leroy Tate, asserted, among other things, that business had declined and that he might be able to pay the amounts agreed to in the settlement agreement if given a year to do so. The compliance officer reminded Tate of his obligations under the terms of the agreement and the consequences of non-compliance, and suggested that Tate put his position and/or proposals in writing if he wished the Regional Director to take them under consideration. The Respondent did not do so. On June 15, 2016, the Region received notification that the Respondent filed for Chapter 7 Bankruptcy on June 8, 2016.

It is well established that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. See, e.g., *Cardinal Services*, 295 NLRB 933, 933 fn. 2 (1989), and cases cited therein. Board proceedings fall within the exception to the automatic stay provisions for proceedings by a governmental unit to enforce its police or regulatory powers. See *NLRB v. 15th Avenue Iron Works, Inc*., 964 F.2d 1336 (2d Cir. 1992); *Cardinal Services*, supra; accord *Ahrens Aircraft, Inc. v. NLRB*, 703 F.2d 23 (1st Cir. 1983).

be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Default Judgment

According to the uncontroverted allegations in the motion for default judgment, the Respondent has failed to comply with the terms of the settlement agreement by, among other things, failing to remit the first installment payment as set forth in the installment payment portion of the settlement agreement. Consequently, pursuant to the noncompliance provisions of the settlement agreement set forth above, we find that all of the allegations in the reissued complaint are true.[2] Accordingly, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been owned by Leroy Tate, a sole proprietorship, doing business as The Green Machine Lawn & Landscaping, with an office and place of business in East St. Louis, Illinois (the Respondent's facility), and has been engaged in providing residential and commercial lawn and landscaping services.

In conducting its operations during the 12-month period ending August 31, 2015, the Respondent provided services valued in excess of $50,000 for the City of O'Fallon, Illinois, a municipality located within the State of Illinois.

In conducting its operations during the 12-month period ending August 31, 2015, the City of O'Fallon, Illinois purchased and received goods and services valued in excess of $50,000 directly from points outside the State of Illinois.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Leroy Tate held the position of Respondent's owner and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

About July 10, 2015, at the Respondent's facility, the Respondent, through Tate, threatened an employee with discharge for complaining about the Respondent's refusal to pay employees holiday pay.

About July 11, 2015, at the Respondent's facility, the Respondent, through Tate, threatened employees with discharge for complaining about the Respondent's refusal to pay employees holiday pay.

About July 11, 2015, by text message, the Respondent, through Tate, informed an employee that the employee was discharged for complaining about the Respondent's refusal to pay employees holiday pay.

About late August 2015, Tate made statements to discourage employees from supporting employees' complaints about the Respondent's refusal to pay holiday pay and the Respondent's discharge of employees.

About July 11, 2015, employees Boyd, Jones, and Hargrove concertedly complained and/or expressed support for employees' complaints regarding the wages, hours, and working conditions of the Respondent's employees, including the Respondent's refusal to pay them holiday pay.

About July 11, 2015, the Respondent discharged Boyd and Jones, and suspended employees Hargrove and Damon Chandler.

About September 19, 2015, the Respondent discharged Hargrove.

The Respondent discharged Boyd, Jones, and Hargrove and suspended Hargrove and Chandler because Boyd, Jones, and Hargrove engaged in the conduct described above, and to discourage employees from engaging in these or other concerted activities.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.[3] Specifically, having

[2] See *U-Bee, Ltd.*, 315 NLRB 667, 668 (1994). Also pursuant to the noncompliance provisions, the Respondent's answer to the original complaint has been withdrawn.

[3] In this regard, we find that the backpay due to Boyd, Jones, Hargrove, and Chandler should not be limited to the amount specified in the settlement agreement. As set forth above, the settlement agreement provided that, in the event of noncompliance, the Board could "issue an order providing a full remedy for the violations found as is appropriate to remedy such violations." The General Counsel has requested in his Motion for Default Judgment that the Board issue an order providing for a full remedy for the unfair labor practices alleged. Thus, under this language, it is appropriate to provide the Board's customary remedies, including reinstatement, full backpay and benefits, expungement of the Respondent's personnel records, and a notice posting. See *L.J. Logistics, Inc*., 339 NLRB 729, 730-731 (2003).

found that the Respondent violated Section 8(a)(1) by discharging Charles Boyd, Marcell Jones, and Charlando Hargrove, and suspending Hargrove and Damon Chandler, we shall order the Respondent to offer Boyd, Jones, and Hargrove full reinstatement to their former jobs, or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed. In addition, we shall order the Respondent to make Boyd, Jones, Hargrove, and Chandler whole for any loss of earnings and other benefits they may have suffered as a result of the Respondent's unlawful actions against them. Backpay shall be computed as prescribed in *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

We shall further order the Respondent to compensate Boyd, Jones, Hargrove, and Chandler for any adverse tax consequences of receiving lump-sum backpay awards and to file a report with the Regional Director for Region 14 allocating backpay to the appropriate calendar years for each employee. *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016). In accordance with our recent decision in *King Soopers*, *Inc*., 364 NLRB No. 93 (2016), we shall also order the Respondent to compensate Boyd, Jones, and Hargrove for their search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.[4]

The Respondent shall also be ordered to remove from its files any references to the unlawful discharges of Boyd, Jones, and Hargrove and the unlawful suspensions of Hargrove and Chandler and to notify them in writing that this has been done and that the unlawful actions will not be used against them in any way.

ORDER

The National Labor Relations Board orders that the Respondent, Leroy Tate d/b/a The Green Machine Lawn & Landscaping, East St. Louis, Illinois, its officers, agents, successors, and assigns, shall take the following affirmative action necessary to effectuate the policies of the Act.

1. Cease and desist from

(a) Threatening employees with discharge for complaining about the Respondent's refusal to pay employees holiday pay.

(b) Informing employees they are being discharged for complaining about the Respondent's refusal to pay employees holiday pay.

(c) Making statements to discourage employees from supporting employees' complaints about the Respondent's refusal to pay employees holiday pay and the Respondent's discharge of employees.

(d) Discharging or suspending employees because they complained and/or expressed support for employees' complaints regarding wages, hours, and working conditions, including the Respondent's failure to pay employees holiday pay and the Respondent's discharge of employees, and to discourage employees from engaging in these or other concerted activities.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Charles Boyd, Marcell Jones, and Charlando Hargrove full reinstatement to their former jobs, or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Charles Boyd, Marcell Jones, and Charlando Hargrove whole for any loss of earnings and other benefits suffered as a result of their unlawful discharges, and make Hargrove and Damon Chandler whole for any loss of earnings and other benefits suffered as a result of their unlawful suspensions, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any references to the unlawful discharges of Boyd, Jones, and Hargrove and unlawful suspensions of Hargrove and Chandler, and within 3 days thereafter, notify them in writing that this has been done and that the unlawful actions will not be used against them in any way.

(d) Compensate Boyd, Jones, Hargrove, and Chandler for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 14, within 21 days of the date the amount of backpay is fixed, either by agreement or by Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for

[4] For the reasons stated in his separate opinion in *King Soopers*, 364 NLRB No. 93, slip op. at 9-16, Member Miscimarra would adhere to the Board's former approach, treating search-for-work and interim employment expenses as an offset against interim earnings.

good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including electronic copy of such records if stored in an electronic form, necessary to analyze the amount of backpay due under the terms of this order.

(f) Within 14 days after service by the Region, post at its East Saint Louis, Illinois facility copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 10, 2015.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 30, 2016

Mark Gaston Pearce, Chairman

Philip A. Miscimarra, Member

Lauren McFerran, Member

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

FEDERAL LAW GIVES YOU THE RIGHT TO:

Form, join, or assist a union;

Choose a representative to bargain with us on your behalf;

Act together with other employees for your benefit and protection;

Choose not to engage in any of these protected activities.

WE WILL NOT threaten you with discharge for complaining about our refusal to pay employees holiday pay.

WE WILL NOT inform you that you are being discharged for complaining about our refusal to pay employees holiday pay.

WE WILL NOT make statements to discourage you from supporting employees' complaints about our refusal to pay employees holiday pay and our discharge of employees.

WE WILL NOT discharge or suspend you because you complained and/or expressed support for employees' complaints regarding wages, hours, and working conditions, including our failure to pay employees holiday pay and our discharge of employees, and to discourage you from engaging in these or other concerted activities.

WE WILL NOT in any like or related manner interfere with the rights listed above.

WE WILL, within 14 days of the Board's Order, offer Charles Boyd, Marcell Jones, and Charlando Hargrove immediate and full reinstatement to their former jobs, or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Charles Boyd, Marcell Jones, and Charlando Hargrove whole for any loss of earnings and other benefits resulting from their unlawful discharges, less any net interim earnings, plus interest, plus reasonable search-for-work and interim employment expenses.

WE WILL make Charlando Hargrove and Damon Chandler whole for any loss of earnings and other benefits suffered as a result of their unlawful suspensions, less any net interim earnings, plus interest.

WE WILL compensate Boyd, Jones, Hargrove, and Chandler for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 14, within 21 days of the date the amount of backpay is fixed, either by agreement or by Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

WE WILL, within 14 days from the date of this Order, remove from our files any references to the unlawful discharges and suspensions of Boyd, Jones, Hargrove, and Chandler, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the unlawful actions will not be used against them in any way.

LEROY TATE D/B/A THE GREEN MACHINE LAWN & LANDSCAPING

The Board's decision can be found at www.nlrb.gov/case/14-CA-157587 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.